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EXAMINER
NGUYEN, DUSTIN

ART UNIT	PAPER NUMBER
2454	

NOTIFICATION DATE	DELIVERY MODE
12/10/2009	ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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	Application No.	**Applicant(s)**
Office Action Summary	10/537,705	NEIL ET AL.
	Examiner	**Art Unit**	
	DUSTIN NGUYEN	2454	

-- *The MAILING DATE of this communication appears on the cover sheet with the correspondence address* --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE <u>3</u> MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.
- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
  Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) ☒ Responsive to communication(s) filed on *10 September 2009*.

2a) ☒ This action is **FINAL.**   2b) ☐ This action is non-final.

3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4) ☒ Claim(s) *1,3-5,8-13,15-17 and 20-28* is/are pending in the application.

    4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5) ☐ Claim(s) _____ is/are allowed.

6) ☒ Claim(s) *1,3-5,8-13,15-17 and 20-28* is/are rejected.

7) ☐ Claim(s) _____ is/are objected to.

8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9) ☐ The specification is objected to by the Examiner.

10) ☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

    Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

    Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

    a)☐ All   b)☐ Some * c)☐ None of:

      1. ☐ Certified copies of the priority documents have been received.

      2. ☐ Certified copies of the priority documents have been received in Application No. _____.

      3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

    * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)

2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)

3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.

4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____

5) ☐ Notice of Informal Patent Application

6) ☐ Other: _____.

DETAILED ACTION

1.   Claims 1, 3-5, 8-13, 15-17 and 20-28 are presented for examination.

Response to Arguments

2.   Applicant's arguments filed 09/10/2009 have been fully considered but they are not

persuasive.

3.   As per remarks, Applicants argued that (1) Himmel reference discloses elements of the

method of claim 1 at the client device, and cannot disclose a method "at a server in

communication with said wireless communication device".

4.   As to point (1), Examiner respectfully disagrees. Himmel clearly discloses a server

application that intercepts or otherwise handles, the HTML requests from requesting clients to a

particular HTTP server, this application, the "client-smart agent", attaches itself to the HTTP

server and redirects the server to the correct page depending on the client device, alternatively,

the client-smart agent can be implemented as an application which intercepts the requests before

the server receives them [col 5, lines 32-46]. In addition, Himmel shows the client-smart agent

155 is separate from client browser 151 [Figure 4], and discloses the client-smart agent will

send an applet over the network to the client machine to identify the client type [col 5, lines 63-

66]. As such, Himmels discloses the elements of the method occurs at the client-smart agent

attached to the server, and not solely occurs at the client device as argued.

Claim Rejections - 35 USC § 102

5.   The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the

basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (b) the invention was patented or described in a printed publication in this or a foreign
> country or in public use or on sale in this country, more than one year prior to the date of
> application for patent in the United States.

6.   Claims 1, 4, 6, 8-10, 13, 16, 20-22 are rejected under 35 U.S.C. 102(b) as being

anticipated by Himmel [US Patent No 6,167,441].

7.   As per claim 1, Himmel discloses the invention as claimed including a method of

determining operational status of a wireless communication device capable of executing server-

side applications [i.e. determine the type of client device which is requesting services from a

web server] [col 2, lines 20-22], said wireless communication device being a mobile device [

Figure 3; col 3, lines 8-14; and col 6, lines 28-33], the method

comprising:

        at a server in communication with said wireless communication device [Figure 4; and col

5, lines 32-46 and 63-66]:

sending a message to said wireless communication device capable of executing server-side applications requesting operational status of the device [i.e. snoop or request for device information] [209, Figure 5, Figure 6; col 7, lines 18-38; and col 8, lines 19-41]; and

receiving a response message from said wireless communication device indicative of the operational status of the device [i.e. user input sent back] [col 7, lines 6-10 and lines 28-38; and col 8, lines 19-col 9, lines 6]

wherein said operational status of the wireless communication device comprises:

an indication of N messages most frequently received at said device, where N is an integer; an name of a user interface screen currently displayed at said device; a network identifier identifying a wireless network over which said device is communicating; or an indication of available memory at said wireless communication device [i.e. the browser client type and operating system in use] [col 5, lines 54-62].

8.   As per claim 4, Himmel discloses wherein said operational status of the wireless communication device comprises said indication of said user interface screen currently displayed at said device [i.e. display capability] [Figure 6; Abstract; and col 8, lines 52-col 9, lines 6].

9.   As per claim 8, Himmel discloses wherein said operational status of the wireless communication device comprises said indication of available memory at said wireless communication device [Abstract; and col 2, lines 30-35].

10.   As per claim 9, it is rejected for similar reasons as stated above in claim 1.

11.   As per claim 10, Himmel discloses wherein said response message is an eXtensible

Markup Language (XML) message [col 1, lines 56-64].

12.   As per claim 13, it is rejected for similar reasons as stated above in claim 1.

13.   As per claim 16, it is rejected for similar reasons as stated above in claim 4.

14.   As per claim 20, it is rejected for similar reasons as stated above in claim 8.

15.   As per claim 21, it is rejected for similar reasons as stated above in claim 1.

16.   As per claim 22, it is rejected for similar reasons as stated above in claim 10.

Claim Rejections - 35 USC § 103

17.   The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all

obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or
> described as set forth in section 102 of this title, if the differences between the subject
> matter sought to be patented and the prior art are such that the subject matter as a whole
> would have been obvious at the time the invention was made to a person having ordinary
> skill in the art to which said subject matter pertains. Patentability shall not be negatived
> by the manner in which the invention was made.

18.   Claims 3, 15 and 25-28 are rejected under 35 U.S.C. 103(a) as being unpatentable over

Himmel [US Patent No 6,167,441], in view of Dew et al. [US Patent Application No

2006/0195912].

19.   As per claim 3, Himmel does not specifically disclose wherein said operational status of

the wireless communication device comprises indication of N messages most frequently received

at said device. Dew discloses wherein said operational status of the wireless communication

device comprises said indication of N messages most frequently received at said device [i.e.

email messages are most frequently received] [paragraphs 0036 and 0038]. It would have been

obvious to a person skill in the art at the time the invention was made to combine the teaching of

Himmel and Dew because the teaching of Dew would enable to control and manage messages in

a more efficient manner.

20.   As per claim 15, it is rejected for similar reasons as stated above in claim 3.

21.   As per claims 25-28, Dew discloses wherein said indication of N messages is an

indication of a plurality of messages [paragraphs 0036, 0038, and 0041].

22.   Claims 11, 12, 23 and 24 are rejected under 35 U.S.C. 103(a) as being unpatentable over

Himmel [US Patent No 6,167,441], in view of Tim Bray, Jean Paoli, C. M. Sperberg-McQueen,

Eve Maler, Rancois Yergeau, "Extensible Markup Language (XML) 1.0 (Third Edition)", W3C

Recommendation 04 February 2004 [hereinafter as Bray et al.].

23.   As per claims 11 and 12, Himmel does not specifically disclose wherein said composing

comprises verifying that a textual operational status description forming part of said response

message omits illegal XML characters, and wherein said verifying comprises passing said textual

operational status description through an XML formatter for removal of any illegal XML

characters. Bray et al. discloses wherein said composing comprises verifying that a textual

operational status description forming part of said response message omits illegal XML

characters, and wherein said verifying comprises passing said textual operational status

description through an XML formatter for removal of any illegal XML characters [Section 2.3].

It would have been obvious to a person skill in the art at the time the invention was made to

combine the teaching of Himmel and Bray et al. since the teaching of XML would enable to

support a wide variety of applications, easy to write programs, etc… [Bray et al., section 1.1].

24.   As per claims 23 and 24, they are rejected for similar reasons as stated above in claims 11

and 12.

25.   Applicant's amendment necessitated the new ground(s) of rejection presented in this

Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a).

Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE

MONTHS from the mailing date of this action. In the event a first reply is filed within TWO

MONTHS of the mailing date of this final action and the advisory action is not mailed until after

the end of the THREE-MONTH shortened statutory period, then the shortened statutory period

will expire on the date the advisory action is mailed, and any extension fee pursuant to 37

CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event,

however, will the statutory period for reply expire later than SIX MONTHS from the date of this

final action.

Conclusion

Any inquiry concerning this communication or earlier communications from the

examiner should be directed to Dustin Nguyen whose telephone number is (571) 272-3971. The

examiner can normally be reached on flex.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's

supervisor, Nathan Flynn can be reached at (571) 272-1915. The fax phone number for the

organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent

Application Information Retrieval (PAIR) system. Status information for published applications

may be obtained from either Private PAIR or Public PAIR. Status information for unpublished

applications is available through Private PAIR only. For more information about the PAIR

system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR

system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/DUSTIN NGUYEN/
Primary Examiner, Art Unit 2454